



ECI Interdisciplinary Journal for Legal and Social Policy

Volume 3 | Issue 1

Article 3

11-25-2013

Education Reform and the Political Safeguards of Federalism

Elizabeth J. Sharma
ejsharma@gmail.com

Recommended Citation

Sharma, Elizabeth J. (2013) "Education Reform and the Political Safeguards of Federalism," *ECI Interdisciplinary Journal for Legal and Social Policy*: Vol. 3 : Iss. 1 , Article 3.
Available at: <https://digitalscholarship.tsu.edu/thebridge/vol3/iss1/3>

This Article is brought to you for free and open access by Digital Scholarship @ Texas Southern University. It has been accepted for inclusion in ECI Interdisciplinary Journal for Legal and Social Policy by an authorized editor of Digital Scholarship @ Texas Southern University. For more information, please contact rodriguezam@TSU.EDU.



Education Reform and the Political Safeguards of Federalism

Contents

I.	INTRODUCTION.....	3
II.	BUREAUCRACY AS A POLITICAL SAFEGUARD	5
a.	Bureaucracy and New Deal Youth Programs	5
b.	Bureaucracy and The Elementary and Secondary Education Act.....	9
III.	PARTY POLITICS AS A POLITICAL SAFEGUARD.....	14
a.	Party Politics and Administrative Progressivism.....	15
b.	Party Politics from the 1950s to the Great Society	16
c.	Party Politics Culminating in NCLB	20
IV.	Conclusion	23
	Bibliography	25

Education Reform and the Political Safeguards of Federalism

I. INTRODUCTION

The passage of the No Child Left Behind Act (NCLB) in 2001 sparked widespread controversy over the federal government's proper role in public education. Opponents criticized the legislation as an unprecedented federal intrusion on state and local governments' policymaking authority. Whereas previous incarnations of the Elementary and Secondary Education Act (ESEA) required local schools and districts to comply with detailed rules about how to spend categorical funds, federal moneys were never before made contingent on a rigorous testing and accountability regime. By requiring annual testing and tying federal funding to student outcomes, the new legislation signaled a shift in the federal government's role vis à vis subnational governing bodies.

This shift in authority led some to question whether state and local governments' structural protections from federal overreaching are dead—at least in the field of public education. In *The Political Safeguards of Federalism*, Herbert Wechsler argued that because states' rights are preserved through the legislative process, the Supreme Court need not intervene to protect states from federal regulatory intervention. The legislative process shelters state autonomy, Wechsler argued, by ensuring that federal legislation must gain the approval of the Senate, which is responsive to state interests, the House, whose congressional districts are dictated by state legislatures, and the president, who depends on states through the Electoral College system. According to critics, congressional acquiescence in President George W. Bush's

drive for top-down standards-based reform (SBR) demonstrates the failure of these traditional safeguards.

Beginning in the 1990s, the Supreme Court stopped deferring to federal regulatory authority and began striking down legislation it deemed overly intrusive. According to the Court, national political institutions had failed to protect state interests, thus necessitating a more robust role for the judiciary in preserving the delicate balance between state and federal interests. Because federal legislators are under pressure to solve pressing national problems but are not responsible for implementation, they will inevitably pass the buck to state representatives by voting for coercive, unfunded mandates. Bipartisan support for NCLB brought together the likes of Representative Tom DeLay, a fierce opponent of federal intervention who once sought to eliminate the Department of Education, and liberal Democrats such as Senator Edward Kennedy, lending support to the Supreme Court's more aggressive stance. It could be argued that federal representatives arrived at a legislative compromise without seriously considering NCLB's impact on a broad spectrum of state and local constituents.

In response to mounting criticism of Wechsler's theory, Dean Larry Kramer has developed an alternative version of the political safeguards framework. He posits that the political party system itself protects states from federal intrusion because each party has representatives operating at multiple layers of government, all of whom are mutually dependent. According to this theory, representatives at the national level must respond to local and state concerns in exchange for political support, thus producing a natural check on federal encroachment. Dean Kramer further characterizes the proliferation of bureaucratic agencies beginning with the New Deal as an additional political safeguard of federalism. Like national political parties, regulatory agencies link federal, state, and local administrators together because

the federal government relies on administrators at lower levels of government to implement policy.

Dean Kramer's revived political safeguards theory has interesting implications for the education field because of the unique role that politics and bureaucracy have played in the promulgation and implementation of federal education legislation. In this paper, I will apply Kramer's political safeguards thesis to four educational reform movements: a New Deal Youth Program, administrative progressivism, the ESEA, and the modern standards-based reform (SBR) movement culminating in NCLB. Specifically, I will draw on educational reforms of these four periods to explore the extent to which bureaucracy and the party system can successfully mediate disputes over the division of power between local, state, and federal government.

I will begin by comparing the role of bureaucracy in furthering or frustrating federalist aims in education governance under President Roosevelt's New Deal and President Johnson's Great Society. Then, I will consider the role of party politics in federal education reform, from progressives' attempt to depoliticize the field to the political consensus embodied in NCLB.

II. BUREAUCRACY AS A POLITICAL SAFEGUARD

a. Bureaucracy and New Deal Youth Programs

Amid the flurry of federal legislation aimed at propping up a devastated economy during the Great Depression, there was a surprising paucity of support for general aid to public education. Despite professional educators' calls for federal assistance, President Franklin Roosevelt was reluctant to provide financial support to existing state education agencies. He firmly believed that education should be controlled at the local level, and that federal aid could

be used more effectively to tackle economic woes directly. Foreshadowing contemporary education reformers who question the marginal utility of aid to education, Roosevelt believed that the problems in education were “inevitably bound up with economic conditions” and so “[t]he best way for your national government to assist state and local educational objectives . . . is to tackle the national aspects of economic problems.” (Smith 1982)

In keeping with this philosophy, the president backed New Deal programs such as the National Youth Association (NYA) and the Civilian Conservation Corps (CCC), which were established as autonomous federal programs operating outside of professional educators’ jurisdictional control. Although the NYA and the CCC were not educational agencies per se, they took on an increasingly educative mission that alarmed the state and local education establishment. For instance, the CCC was established in 1933 under the auspices of four federal departments (Labor, War, Agriculture, and the Interior) to provide training for young men by employing them in natural resource conservation work. (Hendrickson 1976) However, soon after the Corps’ founding, the United States Education Commissioner lobbied for a more robust educational program within CCC camps. The CCC director, together with General MacArthur, resisted the Commissioner’s efforts and favored a marginal role for education in light of the CCC’s original focus on employment and conservation. Despite their protestations, the Commissioner secured approval to add an educational component to the CCC, and by 1938, over ninety percent of Corps enrollees were attending classes as part of a well-developed educational program.

Because the CCC was a federally-funded program existing outside the influence of state and local education agencies, professional educators felt threatened by the growing importance of the Corps’ educational mission. The CCC was self-aggrandizing at their expense in what they

perceived as a zero-sum game for organizational control. In 1941, the National Education Association and the American Association of School Administrators warned that the federal government was using the NYA and the CCC to establish permanent nationwide education programs that could usurp local and state control. Whereas the federal government had in the past “worked through the established state-and-local agencies of education, supplied financial aid, sought to give leadership, yet refrained from control,” the federal government was now seeking to bypass local government in an attempt to exploit the education system. (Gower 1967)

Rather than integrate the educational components of the CCC and NYA within the existing state and local educational apparatus, the president and other federal government officials sought to create a youth organization that would be insulated from traditional educators’ sphere of influence. Proponents of the New Deal programs questioned state educators’ ability to address the pressing needs of marginalized youth, as illustrated by University of Chicago Professor of Education Dr. Charles H. Judd, who queried, “Did the schools show in 1933 and 1935 the slightest insight into the youth problem or any disposition to take care of people who are out of school or out of work?” (Gower 1967) The CCC’s cumbersome administrative structure ceded control over educational programming to administrative agencies such as the U.S. Army and the U.S. Forestry Service, which favored work training over educators’ vision of a “complete educational experience.” (Hendrickson 1976)

The New Deal generated an alphabet soup of federal regulatory agencies that exercise control over state and local government. While the resulting federal bureaucracy initially gave rise to fears of federal preemption of state and local control, Dean Kramer argues that the New Deal’s bureaucratic structure plays a supporting role in federalism by giving voice to state and local administrators. Congress depends entirely on state and local administrators to implement

policies. Moreover, Congress “cannot abandon politically popular programs.” The resulting “mutual dependency guarantees state officials influential voice in the lawmaking and budgetary process.” (L. D. Kramer 2000) Kramer goes on to argue that federal officials are receptive to state and local concerns in part because many of them began their careers at lower levels of government within the same administrative bureaucracy.

Interestingly, the New Deal-era youth programs described above do not fit into this “interlocking” model of bureaucracy. Rather than furthering federalist aims in education governance, the bureaucratic structures with an educational focus established during the New Deal frustrated state educators’ attempts to capture federal aid and influence federal policymaking. First, the CCC did not foster mutual dependency between state and federal administrators. Instead of relying upon these administrators to oversee or implement the program, the federal government launched a relief effort through overlapping federal agencies, none of which was traditionally responsible for education. State-level officials from the Departments of Labor, War, Agriculture, and the Interior who were charged with administering the CCC did not answer to those within the education establishment. Moreover, the Education Commissioner’s efforts to bring the program under the control of the Office of Education proved futile. As such, educators were cut out of the administrative system at the federal and state level.

The fleeting nature of Depression-era reforms further weakened states’ bargaining position vis à vis the federal government. Programs like the CCC were ostensibly launched as emergency relief efforts designed to help young men devastated by the Depression get back on their feet. While educators feared a permanent role for the CCC, they faced an uphill battle in persuading the federal government that assistance for the temporary program should be channeled through education agencies. Like a tent city built in the wake of a natural disaster, the

CCC emerged outside the traditional locus of control. A series of articles written in 1940 and 1941 by CCC proponents confirmed educators' fears that federal officials sought a more lasting role: the national educational director of the CCC called for a "shift of emphasis in the CCC" arguing that the CCC is "an essential part of the American educational structure." An educational advisor added, "the CCC should be made compulsory for all American boys, with the federal government accepting responsibility for training the youth." (Gower 1967) In the end, the build-up to war, together with ongoing tensions within the program, led to its demise.

b. Bureaucracy and The Elementary and Secondary Education Act

Beginning in 1964, President Lyndon Johnson put education reform at the top of the national agenda for the first time under the banner of his comprehensive War on Poverty, thus ending a decades-long stalemate over federal aid to education. (Manna 2006) (E. DeBray 2006) Nevertheless, the president had to contend with a feeble bureaucracy at both the state and federal level. The U.S. Office of Education lacked the capacity to lead the reform effort, and state education agencies (SEAs) lacked the capacity to implement federal policy at the local level. (Graham 1984) (Ellis 1983, 358)¹ The federal officials on the Gardner education task force were left with one alternative: build up state-level bureaucratic capacity while simultaneously delegating to SEAs the authority to channel federal funds to local school districts. (Manna 2006) Title V of the ESEA emerged as the primary tool for building institutional capacity at the state level. The provision set aside a portion of federal funding to assist state education departments

¹ According to Graham (1984), the Gardner Task Force responsible for outlining President Johnson's education plan had little faith in the state education agencies: "If, from the elite viewpoint of the BOB, the Office of Education was a third-rate bureaucracy of report writers, statistics gatherers, and professional 'educationists,' the state departments of education were regarded by USOE and by many task force members with equal disdain."; Ellis (1983) notes that in 1962, only 10 SEAs had a total staff of more than 100, and 21 had fewer than 50.

in laying a bureaucratic foundation that could support the ESEA and other federal initiatives. (Thomas, *Education in National Politics* 1975)²

The categorical approach to funding embedded in the structure and goals of Title I was politically savvy in that the special needs categories slated for funding existed in every congressional district. (Kirst and Wirt 2001) However, categorical aid soon faced criticism on several fronts, two of which are particularly relevant to the safeguards of federalism. On one hand, the legislation handcuffed local educators, who were not afforded discretion in how to allocate spending. An underlying justification for categorical aid as opposed to block grants was the need to ensure that specific funding streams reached the children who needed the money most. In light of the vast disparity in educational funding at the local and state level, Title I was built on a fundamental sense that states and districts could not be trusted to spend the money on disadvantaged students. (Kirst and Wirt 2001) (Elmore and McLaughlin 1983, 309)³ The Johnson administration's management approach "reflected a fear that local political concerns would divert Title I funds to less needy children" and thereby controvert the overarching purpose of the Act. (M. W. Kirst 1984) This fear that Title I funds would "spill over" to non-Title I students resulted in the creation of a "separate administrative apparatus . . . composed of state and local Title I coordinators whose allegiance was different from, and sometimes counter to, that of supporters of a district-wide or statewide core curriculum." Those charged with implementing the reform at the ground level could not incorporate Title I services into the

² Thomas (1975) notes that "some have argued that Title V was meant to placate state education officials who objected to direct federal grants to LEAs authorized under Titles III and IV on the ground that they weakened the supervisory authority of SEAs." *See also* (Cross 2004) (commenting on the difficulty of funding capacity-building in human-service programs, given the public's aversion to supporting the salaries of bureaucrats rather than expanding services).

³ Kirst (2001) hones in on the central sticking point, writing, "This dispute over state versus local control really centers on two values—central equity and local choice."

general curriculum, and so categorical aid generated a middle-level bureaucracy that reflected the fragmented funding environment in which it operated. (McDonnell 2008) (Timpane 1978)⁴

In addition to the practical constraints imposed on street level bureaucrats charged with administering categorical grants, the fiscal autonomy and enforcement role of state administrators placed them at odds with local administrators. Most state officials charged with distributing federal funds and ensuring compliance owed no allegiance to state or local administrators because they were financed almost entirely by the federal government. This phenomenon drove a wedge not only between state and local officials, but also between staff carrying out different mandates within districts and even within schools. Federally funded teachers and administrators working at all levels of the system came to be viewed as federal agents who were “poorly linked to the classroom world below.” (Ellis 1983)⁵ (McDonnell 2008)

By constraining local educators’ flexibility and insulating SEAs from the local and state governance structure, Title I of ESEA arguably wrought a system based more on compliance and enforcement than on cooperation. Taken as whole, however, the legislation produced a system which, as compared with the administrative structure of the New Deal youth programs, better comports with Kramer’s political safeguards theory. Three components of the ESEA support the theory that bureaucracy furthers the interests of federalism: mutual dependency, capacity building, and interest groups.

⁴ See also (M. W. Kirst 1984) (“Categoricals developed largely in isolation of each other, which rapidly led to a local and state disease called ‘hardening of the categories’. Most of the categoricalals initially were not directed at the core classroom technology for curriculum and instruction. Special education and Title I, for example, relied significantly on “pull-out” programs that were not integrated well with core subject instruction.”); Kaestle and Smith, 1982.

⁵ Ellis (1983) describes clusters of federally funded teachers and staff as constituting “a little ‘federal world’ in each school system and possibly within each school. In the schools, it was not unusual to find federally funded teachers and aides in their own sections of the building where materials were housed and children were taught without significant continuing contact with the regular staff.”

First, federal officials depended on local teachers and administrators—members of the education establishment—to implement the ESEA, whereas the New Deal administrators strove to insulate their programs from educators’ influence. As noted above, federally-financed teachers and staff did not always work in tandem with other teachers, but the fact that the ESEA was embedded in the existing education system produced a more integrated bureaucracy as compared with the CCC. The federal government’s dependence on lower-level administrators was further enhanced by the fact that the ESEA is a permanent federal program, as opposed to a temporary emergency effort in response to a national catastrophe. The permanence of ESEA in the national consciousness distinguishes the legislation not only from New Deal programs, but also from previous categorical aid programs designed to address an immediate contingency—for example, the National Defense Education Act of 1958, which was passed against the backdrop of Cold War.⁶ Although the ESEA technically cast states and local agencies as the “servants” in a master-servant relationship, or as “agents” in a principal-agent relationship, the federal government’s total reliance on subnational organizations enhances the power and autonomy of street-level bureaucrats. (Gerken 2009)⁷ Because the federal government has no choice but to delegate power to experts below, state and local officials retain an informal veto power over federal policies and have some discretion in how they accomplish their task. As a result, policy outcomes are refracted through a set of “institutional priorities, capacity, management preferences, and demands.” (Gerken 2009) (Elmore and McLaughlin 1983) Mutual dependency also enables state and local officials to push back against federal reforms that are unworkable at the local level and negotiate for better terms. (Nugent 2009)

⁶ The title of the NDEA invokes the national security concerns it was designed to address: the legislation was passed in response to the Soviet launching of sputnik, and authorized funding to elementary and secondary education in the areas of mathematics, science, and foreign languages.

⁷ The authors discuss “the power of the servant” which state and local government derives from the federal government’s dependence on state and local administrators. *See also* (Metzger 2008) (“responsibility for program implementation and enforcement appears to enhance state influence over federal agency decision making”).

Second, in order to delegate implementing authority to lower levels of government, the Johnson administration recognized the need to strengthen local and state education agencies. Title V of the Act was aimed specifically at building capacity at the state level so that SEAs could properly implement the ESEA and other federal programs. Whereas the New Deal programs for youth located administrative authority in disparate federal departments having little to do with education, the ESEA embeds state and local education agencies within a single interlocking system of educational governance such that multiple bureaucratic layers become mutually reinforcing. (Metzger 2008)⁸ Although the interests and priorities of the resulting web of agency specialists may not align perfectly with those of the state governor and legislature, the bonds created between bureaucratic levels serve as a buffer against federal overreaching. This phenomenon, often termed “picket fence federalism,” is especially prominent where specialists are more involved in agenda setting and shaping at the state level than are political figures. (Nugent 2009, 28) State-level bureaucrats’ role in shaping ESEA implementation can be contrasted with the education establishment’s marginal impact on the CCC during Roosevelt’s presidency. At that time, the education establishment vociferously protested the New Deal strategy—but did so as an outsider to the system. Although their outsider status gave them the freedom to speak openly against the federal government and left them “untainted by any association with the policies they were criticizing,” educators and administrators suffered from a lack of “knowledge of the system and personal relations with the people best positioned to change the policy.” (Gerken 2009) Because educators were not embedded in the CCC educational programming, they perceived every advance made by CCC advisors as an incursion on their domain in a zero-sum competition for control. Although the Johnson administration

⁸ Metzger (2008) argues that “agency structure also appears relevant, with regional offices offering an opportunity for developing closer state-federal relationships and sensitivity to state interests. Such close relationships may create internal agency support for paying attention to state needs that could counterbalance the states’ loss of external access to federal decision makers.”

expressed lingering doubts as to the states' willingness or ability to fulfill Title I's anti-poverty goals, the federal government had made considerable advances by the 1960s toward a federal-state cooperative partnership. Paul Manna has described how modern iterations of federal intervention in education are better characterized as a process of "borrowing strength" whereby the federal government builds capacity at the state level and then relies on states to implement policy. He argues that construing federal-state relations as a zero-sum game misses "the ways federalism can enable actors at all levels of government simultaneously." (Manna 2006) The Johnson administration's focus on capacity building and its willingness to delegate a degree of control to state and local actors produced a degree of collaboration, and enabled the federal government to rely more heavily on state agencies leading up to the SBR movement.

Finally, the ESEA categorical approach produced a plethora of interest groups that were previously excluded from education policymaking. Once offered a voice in the process, these constituencies fought to retain their gains, and thus emerged as an enduring fixture in the education landscape. Newly empowered interest groups further strengthened the balance of power between various bureaucratic levels by both exploiting their differences and reinforcing similarities. Constituencies seeking to further their educational goals benefit from multiple access points to the educational bureaucracy. If they disagree with federal policy, interest groups can exploit and thereby reaffirm the vertical separation of power between federal and state administrative agencies. Conversely, interest groups who lobby in favor of a particular policy at the local, state, and federal levels forge ties with sympathetic administrators throughout the system, thus enhancing the interdependency of multiple layers of the system.

III. PARTY POLITICS AS A POLITICAL SAFEGUARD

In the same way that bureaucracy forges ties between federal, state, and local officials, Kramer argues the “American system of decentralized national political parties . . . link[s] the fortunes of federal officeholders to state politicians and parties and in this way assure[s] respect for state sovereignty.” (L. D. Kramer 2000) Given that education is often characterized as “above politics,” what hope do state and local actors have of influencing education policymaking? Kramer’s theory has interesting implications for education precisely because education is a thoroughly political issue wrapped in a thin *apolitical* veil. In this section, I will consider the role of party politics in three waves of education reform: First, I will focus on administrative progressives’ attempt to strip education of its political roots so as to confine the field to the realm of experts. Second, I will discuss President Johnson’s effort to reinsert politics into education by advocating for federal aid as a hallmark of the Democratic Party platform. Lastly, I will discuss Republican presidents’ evolving education strategy, which culminated in a legislative compromise—NCLB—that broke the Democrats’ monopoly over the politics of education. These three eras serve as a helpful comparative sample for testing Kramer’s political safeguards theory because they indicate the gradual politicization of the field of education over the last century.

a. Party Politics and Administrative Progressivism

School governance reformers associated with the administrative progressive movement began in earnest to dismantle the political spoils system in education at the turn of the twentieth century as part of an overall effort to establish professional control over education. (Ravitch and Vinovskis 1995) Timar explains in *The Institutional Role of State Education Departments* that, “[i]nstead of developing as a differentiated branch of state government in which the civil society vested authority for educational decision making, state education bureaucracies became

dominated by professional interests” including school district administrators and professors of education. (Timar 1997) Professionals, not the general public, were therefore the primary source of state and local educational reform—and most progressive reforms were designed to concentrate professionals’ authority. The public was further shut out of the policymaking process by the administrative progressives’ effort to depoliticize the field of education. (Cibulka 2001)⁹ By “equating professional control with the common good,” progressives were able to contain policymaking within their own sphere of influence.¹⁰ They operated outside the politically responsive legislative branch and so were untouched by pressure groups. Dean Kramer notes that progressivism is one among several “[s]uccessive waves of reform [that] maimed and nearly killed [the party system] over the course of the twentieth century’s first six decades.” (L. D. Kramer 2000) The professionals in charge of education essentially constituted a single-issue political party with a homogenous and well-disciplined constituency. And yet, the progressives’ political purity made them weak in the face of federal intervention, as evidenced by their inability to convince federal officials during the New Deal to channel federal aid through the regular public education system. At the time, the “regular” public education system belonged to the progressives, and they had worked hard to depoliticize the field. As a result, education reformers in favor of New Deal funding could not tap into political connections at the federal level. Ironically, by protecting their turf through depoliticization, the progressives may have made themselves more vulnerable to unwanted federal intrusion.

b. Party Politics from the 1950s to the Great Society

⁹ Cibulka (2001) writes, “Educational Progressivism . . . always has had a dim view of politics. Despite their claims to neutrality, Progressives favored a particular style of politics. This political belief system can be aptly called professional autonomy By formally separating school boards from municipal government in most jurisdictions, Progressives made possible the operation of school systems under strong professional influence. They sought an institutional framework that would assure less of a role in our schools for corrupt politicians, the parochial interests of neighborhoods (compared with the broader community), and the self-interests of parents.”

¹⁰ School administrators saw themselves “as the embodiment of the public interest, its vigilant protector.” (Cibulka, 2001)

By the 1950s, the progressives' cult of professionalism gave way as those outside the education establishment began to question the effectiveness of the existing system. Public support for federal aid to education swelled after the Soviets launched Sputnik in 1957. A pervasive sense that the U.S. was slipping behind galvanized reform efforts in the area of math and science, leading to passage of the National Defense Education Act (NDEA). (Cibulka 2001) To implement the NDEA, the federal government channeled funding through non-governmental agencies, thereby circumventing the professional-dominated SEAs. Like the New Deal youth programs before it, the NDEA was therefore designed with an eye toward decreasing the "establishment's" influence over federal aid.

Although the 1950s-era reforms loosened the professionals' stranglehold on policymaking, the influence of party politics did not gain momentum until the 1960s. Politicians were reluctant to take a strong stance on education prior to the 1960s in part because the political coalitions making up the Democratic and Republican Parties were sharply divided over the issue of federal aid. In *The Limits of Reform*, Gilbert E. Smith traces a series of bills in support of federal aid for education that failed as a result of political stalemate. (Smith 1982) Prior to the ESEA, the "three Rs"—race, religion, and Reds—repeatedly stymied action at the federal level: "To many Americans, federal aid meant enforced integration, unconstitutional support of parochial schools, and excessive government control of people's lives." (Dallek 2004) These three interrelated issues crossed ideological and party lines and poisoned successive efforts to secure federal aid.

Before Johnson triggered a mass exodus of southerners from the Democratic party by signing the Civil Rights Act of 1964 (Thomas, *Education in National Politics* 1975)¹¹ and Voting Rights Act of 1965, it was still an open question as to whether the federal government could tie funding to racial integration efforts. (E. DeBray 2006) As such, any federal representative seeking to block federal education legislation could simply insert an amendment requiring integrated schools. However, the race issue was removed as a major obstacle to legislation when the Civil Rights Act of 1964 made funding contingent on desegregation efforts. (Thomas 1983) In addition to segregationist southerners, Catholic constituents further complicated the Democratic Party's stance on federal aid to education. Federal funding for education could not overcome the second "R," religion, until Democrats reached a compromise that would offend neither Catholics seeking aid for religious schools nor Protestants and secularists bent on maintaining a strict separation of church and state. President Johnson's child-centered approach¹² to federal aid offered Catholic groups, represented primarily by the National Catholic Welfare Conference (NCWC), supplemental materials such as textbooks, instructional materials, and equipment. (Thomas 1975) The compromise fell short of extending to Catholics full participation in federal assistance programs, but was enough to win their support. Lastly, states' rights advocates' fear of the "Reds" was diminished by the emerging consensus in the 1960s that the federal government had an important role in fighting poverty and protecting minorities from prejudiced state institutions. By focusing the legislation on aid for disadvantaged children,

¹¹ Thomas (1975) writes, "The Civil Rights Act of 1964 furnished another weapon in the campaign for desegregation. Title VI of that landmark statute required federal officials to terminate financial assistance to any state or local government practicing discrimination in programs or activities receiving federal funds."

¹² President Johnson's approach built on the "child benefit theory," articulated in two Supreme Court cases which held that providing aid to parochial schools does not violate the establishment clause of the First Amendment as long as the primary effect of the aid is to benefit the child rather than a religious organization. *Everson v. Board of Education*, 310 U.S. 1 (1947); *Cochran v. Louisiana State Board of Education*, 281 U.S. 370 (1930). The Supreme Court invalidated direct aid for the purchase of secular educational services in *Kurtzman* (1971).

advocates of the ESEA subsumed the bill within the overarching War on Poverty and thereby defused the controversial specter of federal control.

With both houses of Congress firmly in Democratic control, a legislative agenda that included the Civil Rights Act, and astute political maneuvering, the Johnson administration managed to walk a precarious tightrope between the traditional pitfalls of federal educational reform in order to pass sweeping education legislation. Although opponents of federal aid to education continued in their efforts to curtail programming under the ESEA, the legislation produced a number of influential interest groups who fought to maintain what they had gained under the Act. With education at the top of the national agenda, those interest groups who benefitted from ESEA compensatory education services were politically empowered and found a new voice in educational policymaking. Members of the burgeoning educational bureaucracy at the local, state, and federal level provided additional support for ESEA reauthorizations. Together, these proponents of the ESEA and other Great Society legislation helped to sustain Democratic control in the House and Senate until 1981. The resulting “iron triangle” linking interest groups with their allies in Congress and the educational bureaucracy emerged as a nearly invincible force that helped to sustain Democratic control in the House and Senate until President Reagan swept to power in 1981 under the banner of “New Federalism.” (Thomas 1983, 285) (E. DeBray 2006)

By establishing federal aid to education as a national priority and then vesting authority over the system in specialists at the federal, state, and local level, the Democratic Party captured the education field and managed to fight off Republican opposition to the burgeoning administrative system. The Johnson administration thus marks a stage in the politicization process at which the political parties were not yet fully capable of fulfilling their role as

safeguards of federalism. Parties serving in their capacity as federalism buffers should empower state and local politicians to resist federal policies they find overly interventionist. And yet, Republicans at various levels of government who opposed, for instance, categorical funding for students with special needs had little influence at the federal level so long as the Democratic Party dictated the terms of the education debate.

c. Party Politics Culminating in NCLB

President Reagan promised a dramatic devolution of power from the federal government in a broad range of policy areas, including education. However, aside from enacting a budget reconciliation that merged a number of categorical programs into a block grant, his efforts to cut back on federal aid were largely unsuccessful. After education's debut as a national political issue in the 1960s, it was impossible for "New Federalists" to simply put the genie back in the bottle. (Elmore and McLaughlin 1983)¹³ Education had earned a lasting place in party politics, and bipartisan support for a federal role withstood the opposition of Republican Presidents Nixon, Ford, and Reagan. Rather than simply denying the legitimacy of federal aid altogether, the Republican Party would have to advance a set of forward-looking policies. Ironically, by advocating for the destruction of the education bureaucracy in the name of federalism, the Reagan administration failed to capitalize on party politics, one of the primary safeguards of federalism. The administration's propensity for budget cuts left the education ball in the Democrats' court and brought "stalemate, sullenness, and 'conventional warfare,' rather than grand new strategies and cataclysmic battles." (Finn 1983, 392) If the president had instead embraced education's new status as a deeply political issue and formulated a set of distinctly

¹³ Elmore and McLaughlin (1983) urge against the temptation to believe that one can simply "return to an earlier, simpler era" by sharply reducing federal involvement. The authors point out that "[a] tremendously complex network of fiscal, political, and administrative dependencies has grown up among the federal, state, and local levels since 1965."

Republican policies, party members at all levels of government might have had an opportunity to turn the education debate to their advantage. Instead, it was left for future Republican presidents to seize on the politics of education. President George H. W. Bush perfected the new trend when he bypassed the education establishment and cultivated the energy and ideas of the business community and the nation's governors in 2001. (E. DeBray 2006)¹⁴

For many, NCLB signaled a fundamental shift in federal-state relations. It was one thing to enforce compliance with categorical funding requirements, as in the original ESEA, but quite another to attach funding to a stringent testing regime that applied to all students. The transition to standards-based reform at the national level was all the more surprising in that it was championed by a Republican president. Since Reagan's "just say no" policy in the early 80s, Republicans had managed to craft an effective message focused on choice, local control, and deregulation in order to compete with Democrats on the education policy front. (E. DeBray 2006) Despite their ideological consistency up until the Bush presidency, Republicans seemed to abandon all pretenses of protecting state and local interests by towing the NCLB line in the name of party unity.

A closer analysis of the process leading up to NCLB's adoption reveals a more nuanced story, however. The legislation was less a coup for federal regulators and more a product of lobbying by state-level politicians who were interested in seizing control over education policy from the federal bureaucratic system put in place during the Johnson administration. As discussed above, the ESEA strengthened state *bureaucratic* actors by giving them a hand in influencing education policy, but simultaneously weakened state *political* actors by insulating

¹⁴ Debray (2006) provides an illustrative quote from Glen Chambers, an aide to Senator Sam Brownback (R-KS), a member of the Health, Education, Labor, and Pensions Committee at the end of Clinton's second term: "Republicans have started to really kind of cut their teeth on this issue . . . all of the sudden you have an aggressive, conservative education agenda as opposed to just a 'let's-shut-down-the Department of Education' agenda."

federal programs from their control. Most SEAs operated as autonomous arms of the federal government because they were financially—and thus politically—independent of the state legislature. Meanwhile, state governors and legislatures had little authority over how SEA funds were distributed in their state. The legislation built state capacity but within an institution that was, in many ways, detached from the political branches of government. By the 1970s, school finance litigation forced states to shoulder more of the responsibility for enhancing and equalizing financial support for public schools. (Fuhrman and Elmore 1990) Naturally, state demands for greater control over education policy followed fast on the heels of increased expenditures. Governors and state legislatures were no longer willing to give state education agencies free reign over implementing federal policy, and they began demanding greater accountability in exchange for state resources. (Cibulka 2001) (Manna 2006)

The 1989 national education summit in Charlottesville, Virginia touched off this new era in education governance in which governors and state legislators took the policymaking helm and in so doing, spurred reform at the local and federal levels. (Fuhrman and Elmore 1990) (Kirst and Wirt 2001) As a self-fashioned “Education President,” George H. W. Bush called the meeting with the nation’s fifty governors to discuss public education. To Bush’s surprise, the governors came to the meeting with their own agenda for education reform involving the national education goals, and they persuaded the president to go along. (Manna 2006) Symbolizing the shift from federal to state leadership, the governors insisted that federal officials not dominate the National Education Goals Panel (NEGP), which was formed to oversee the standards movement nationwide. The governors’ accountability scheme became a fixture of the federal education platform under President Bill Clinton, who in 1994 incorporated the plan into “Goals 2000” (which helped states create standards and accountability systems) and the

reauthorization of ESEA as the Improving America's Schools Act (IASA). (Manna 2006) President George W. Bush took the process one step further in advocating for accountability under No Child Left Behind.

NCLB defied the prevailing partisan divide in Washington by bringing elements of the Democratic and Republican parties together under the standards based reform umbrella. This surprising turn of events might seem to demonstrate the failure of the party system to accurately represent state interests in the federal arena. However, NCLB was a direct outgrowth of *state governors'* efforts to tie state funding for education to student outcomes. It might be that governors—and by extension Presidents Clinton and Bush, who gave voice to their concerns—were more politically attuned to the wishes of the general public than were federal representatives who sought to either maintain the status quo or abolish the Department of Education. Moreover, governors are in a better position than state bureaucrats to resist legislation they deem overly restrictive. Governors are highly visible political actors who must respond to state concerns and can wield a great deal of influence at the federal level. Organizations like the National Governors Association (NGA) and the National Conference of State Legislatures can effectively lobby the federal government for state-friendly administrative regulations, and therefore serve as powerful federalism watchdogs. (E. DeBray 2006, 67) Just as state and local bureaucrats are empowered to resist federal mandates, political actors at the state and local level can draw on their party membership to convince federal office-holders to retreat. A prime example of this involves state and local officials' ability to convince the federal government to relax many provisions of NCLB that they viewed as too stringent or simply unworkable.

IV. Conclusion

The long-running debate over the federal role in education reform seems to have shifted from *whether* to *how much*. Depending on where one falls on the political spectrum, the supposedly staggering increase in federal power may be a positive or negative development. And yet, before giving up the federalist system for dead, it is important to identify the built-in mechanisms that preserve the delicate balance between state and federal authority. By applying the political safeguards theory to the question of federal intervention in education, I have shown that bureaucracy and party politics have produced a mutual dependency that in turn protects state sovereignty. The applicability of Kramer's theory to the field of education should reassure those for whom federalism is of primary concern. However, this discussion begs the question of whether the safeguards of federalism are a good thing. The bureaucratic and political shields against federal encroachment might protect state jurisdictional control to the detriment of individual students, or at the expense of a national consensus about the underlying purpose of public education.

Bibliography

- Blanchard, Michael D. "The New Judicial Federalism: Deference Masquerading as Discourse and the Tyranny of the Locality in State Judicial Review of Education Finance." *University of Pittsburgh Law Review* 60 (1998): 231.
- Cibulka, James C. "The Changing Role of Interest Groups in Education: Nationalization and the New Politics of Education Productivity." *Educational Policy* (Corwin Press) 15, no. 1 (2001): 12-40.
- Cross, Christopher T. *Political Education: National Policy Comes of Age*. New York: Teachers College Press, 2004.
- Dallek, Robert. *Lyndon B. Johnson: Portrait of a President*. New York: Oxford University Press, 2004.
- Davidson, Nestor M. "Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty." *Virginia Law Review* 93 (2007): 959.
- DeBray, Elizabeth H. "Partisanship and Ideology in the ESEA Reauthorization in the 106th and 107th Congresses: Foundations for the New Political Landscape of Federal Education Policy." *Review of Research in Education* (American Educational Research Association) 29 (2005): 29-50.
- DeBray, Elizabeth. *Politics, Ideology, & Education*. New York: Teachers College Press, 2006.
- Dinan, John. "Strengthening the Political Safeguards of Federalism: The Fate of Recent Federalism Legislation in the U.S. Congress." *Publius: The Journal of Federalism* 34, no. 3 (2004): 55.
- Dyack, David, James, Thomas, & Benavot, Aaron. *Law and the Shaping of Public Education, 1785-1954*. Madison, Wisconsin: The University of Wisconsin Press, 1987.
- Elazar, Daniel J. *The American Partnership: Intergovernmental Cooperation in the Nineteenth-Century United States*. Chicago & London: University of Chicago Press, 1962.
- Ellis, John. "Since 1965: The Impact of Federal Funds on Public Education." *Education and Urban Society* 15, no. 3 (1983): 351-366.
- Elmore, Richard, and Milbrey Wallin McLaughlin. "The Federal Role in Education: Learning from Experience." *Education and Urban Society* 15, no. 3 (1983): 309-330.
- Elmore, Susan Fuhrman & Richard. "Understanding Local Control in the Wake of Education Reform." *Educational Evaluation and Policy Analysis* (American Educational Research Association) 12, no. 1 (1990): 82-96.

Finn, Chester E. "Reflections on "The Disassembly of the Federal Educational Role"." *Education and Urban Society* 15, no. 3 (1983): 389-396.

Fuhrman, Susan H. "Education Policy: A New Context for Governance." *Publius* (Oxford University Press) 17, no. 3 (1987): 131-143.

Fuhrman, Susan, and Richard F Elmore. "The National Interest and the Federal Role in Education." *Publius* (Oxford University Press) 20, no. 3 (1990): 149-162.

Gerken, Jessica Bulman-Pozen & Heather H. "Uncooperative Federalism." *The Yale Law Journal* 118 (2009): 1256-1310.

Gower, Calvin W. "The Civilian Conservation Corps and American Education: Threat to Local Control?" *History of Education Quarterly* (History of Education Society) 7, no. 1 (1967): 58-70.

Graham, Hugh Davis. *The Uncertain Triumph: Federal Education Policy in the Kennedy and Johnson Years*. Chapel Hill: University of North Carolina Press, 1984.

Hedge, David M., Scicchitano, Michael J., & Metz, Patricia. "The Principal-Agent Model and Regulatory Federalism." *The Western Political Quarterly* (University of Utah) 44, no. 4 (December 1991): 1055-1080.

Heise, Michael. "The Political Economy of Education Federalism." *Emory Law Journal* 56 (2006): 125.

Hendrickson, Kenneth E. Jr. "The Civilian Conservation Corps in Pennsylvania: A Case Study of a New Deal Relief Agency in Operation." *The Pennsylvania Magazine of History and Biography* (The Historical Society of Pennsylvania) 100, no. 1 (1976): 66-96.

James, David Tyack & Thomas. "State Government and American Public Education: Exploring the "Primeval Forest."" *History of Education Quarterly* (History of Education Society) 26, no. 1 (1986): 39-69.

Kaestle, Carl, and Marshall Smith. "The Historical Context of the Federal Role in Education." *Harvard Educational Review* 52, no. 4 (1982).

Kirst, Frederick M., and Michael W. Wirt. *The Political Dynamics of American Education*. Richmond, CA: McCutchan Publishing Corporation, 2001.

Kirst, Joel S. Berke & Michael W. *Federal Aid to Education: Who Benefits? Who Governs?* Washington, DC: DC Heath and Company, 1972.

Kirst, Michael W. "The Changing Balance in State and Local Power to Control Education." *The Phi Delta Kappan* (Phi Delta Kappan International) 66, no. 3 (1984): 189-191.

- Kramer, Larry D. "Putting the Politics Back into the Political Safeguards of Federalism." *Columbia Law Review* 100 (2000): 215.
- Kramer, Larry. "Understanding Federalism." *Vanderbilt Law Review* 47 (1994): 1485.
- Manna, Paul. *School's In: Federalism and the National Education Agenda*. Washington, DC: Georgetown University Press, 2006.
- Marshall, William. "American Political Culture and the Failures of Process Federalism." *Harvard Journal of Law and Public Policy* 22 (1998): 139.
- McDonnell, Lorraine M. "The Changing Nature of Federalism in Education: a Paradox and Some Unanswered Questions." *Paper Prepared for The States' Impact on Federal Education Policy invitational conference*, 2008.
- McLaughlin, Paul Berman & Milbrey Wallin. *Federal Programs Supporting Educational Change, Vol. 1: A Model of Educational Change*. U.S. Office of Education, Department of Health, Education and Welfare, The Rand Corporation, 1974.
- Metzger, Gillian E. "Administrative Law as the New Federalism." *Duke Law Journal* 57 (2008): 2023.
- Miller, Robert A. *The Federal Rose in Education: New Directions for the Eighties*. Washington, DC: Institute for Educational Leadership, 1981.
- Moore, Mary T., Margaret E. Goertz, and Terry W. Hartle. "Interaction of Federal and State Programs." *Education and Urban Society* 15, no. 4 (1983): 452-478.
- Noel Epstein, Ed. *Who's In Charge Here?: The Tangled Web of School Governance and Policy*. Washington, DC: Education Commission of the States, 2004.
- "Note, No Child Left Behind and the Political Safeguards of Federalism." *Harvard Law Review*, 2006: 885.
- Nugent, John. *Safeguarding Federalism: How States Protect Their Interests in National Policymaking*. Norman: University of Oklahoma Press, 2009.
- Orfield, Gail L. Sunderman & Gary. "Domesticating a Revolution: No Child Left Behind Reforms and State Administrative Response." *Harvard Educational Review* 76, no. 4 (2006): 526.
- Peterson, Paul E., and Martin R. West. *No Child Left Behind? The Politics and Practice of School Accountability*. Washington, DC: The Brookings Institution, 2003.
- Radin, Beryl A. "Equal Educational Opportunity and Federalism." *Proceedings of the Academy of Political Science* (The Academy of Political Science) 33, no. 2 (1978): 77-86.

- Ravitch, Diane, and Maris Vinovskis. *Learning From the Past*. Baltimore, MD: The Johns Hopkins University Press, 1995.
- Robinson, Kimberly Jenkins. "The Case for a Collaborative Enforcement Model for a Federal Right to Education." *U.C. Davis Law Review* 40 (2007): 1653.
- Sabel, James S. Liebman & Charles. "A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform." *New York University Review of Law and Social Change* 28 (2003): 183.
- Schapiro, Robert A. "Toward a Theory of Interactive Federalism." *Iowa Law Review* 91 (2005): 243.
- Smith, Gilbert E. *The Limits of Reform: Politics and Federal Aid to Education 1937-1950*. New York & London: Garland Publishing, Inc., 1982.
- Thomas, Norman C. *Education in National Politics*. New York: David McKay Company, Inc., 1975.
- Thomas, Norman C. "The Development of Federal Activism in Education: A Contemporary Perspective." *Education and Urban Society* 15, no. 3 (1983): 271-290.
- Timar, Thomas B. "The Institutional Role of State Education Departments: A Historical Perspective." *American Journal of Education* (The University of Chicago Press) 105, no. 3 (1997): 231-260.
- Timpane, Michael, Ed. *The Federal Interest in Financing Schooling*. Cambridge, MA: Ballinger Publishing Company, 1978.
- Tyack, David. "Public School Reform: Policy Talk and Institutional Practice." *American Journal of Education* (The University of Chicago Press) 100, no. 1 (1991): 1-19.
- Vergari, Michael Mintrom & Sandra. "Education Reform and Accountability Issues in an Intergovernmental Context." *Publius* (Oxford University Press) 27, no. 2 (Spring 1997): 143-166.
- White, Edmund. *Elements of Grammar*. 4th Edition. New York: Harper, 1982.
- Won, Kenneth K. "Federalism Revised: The Promise and Challenge of the No Child Left Behind Act." *Public Administration Review*, December 2008: 175-185.
- Yoon, Paul Frymer & Albert. "Political Parties, Representation, and Federal Safeguards." *Northwestern University Law Review* 96 (2002): 977.
- Zimmerman, Joseph F. *Congressional Preemption: Regulatory Federalism*. Albany: State University of New York Press, 2005.

Zimmerman, Joseph F. "National-State Relations: Cooperative Federalism in the Twentieth Century." *Publius* (Oxford University Press) 31, no. 2 (2001): 15-30.